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Article (Published Version)

Edmunds, Aneira J (2021) Precarious bodies: the securitization of the "veiled" woman in European human rights. *British Journal of Sociology*, 72 (2). pp. 315-327. ISSN 0007-1315

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Precarious bodies: The securitization of the “veiled” woman in European human rights

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Abstract

This article examines how judicial human rights in Europe have adopted the security politics that have swept across Europe in recent years and how, through the European Court of Human Rights' (ECtHR) decision-making over the veil they have contributed to the precarity of the Muslim woman's body. While suffering from stigmatization through securitization of the veil (I am using 'veil' to describe various garments such as the hijab, niqab and burqa. For the purposes of this article, this is a useful shorthand), covered Muslim women's (The concept of Muslim women is a misnomer because it suggests that Muslim women constitute a homogeneous group when they are not. Without denying their heterogeneity, its use here is suggestive of the way it is used by securitizing agents and narratives) attempts at strategic human rights litigation against bans on their clothing, including landmark cases such as *SAS v. France*, have failed. Institutional human rights in Europe have hijacked national governments' security narratives and thus been complicit in furthering the bodily vulnerability of covered Muslim women by sanctioning the public stripping of their clothing. This transgresses human rights' fundamental, normative, commitment to preventing bodily wounding. It exposes the conditionality and limitation of judicial human rights and endorses an idealized version of the exposed woman as free and equal. Moreover, by abandoning its role as neutral

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arbiter or audience, the ECtHR exposes human rights' ongoing link with neo-colonialism. The Court's decision-making raises the question of how veiled women might mobilize to desecuritize the veil. I suggest a return to the politics of rights combined with the "rebellious cosmopolitanism" resonant with Camus' politics to mount relentless protests against governance feminism and the Eurocentrism of institutional human rights for a return to "normal politics".

KEYWORDS

embodied rights, European human rights, Muslim women, securitization

1 | SECURITY POLITICS AND THE VEILED WOMAN

Theories of securitization have focused on the discursive practices of dominant actors (Buzan & Wæver, 2003) and the growth in institutionalized aspects of security, which have the potential to erode civil liberties (Balzacq, 2016). They have focused principally on the state as the main securitizing agent and although key theorists have recognized the need to move beyond a state-centered Eurocentrism, there is more work to be done (Wilkinson, 2007). Moreover, while securitization theory has considered the gendered nature of security, it has been less forthcoming in exploring insecurities tied up with postcolonial statehood and orientalist politics (Bilgin, 2010). The nation-state—with a distinctive but malleable history, culture, and stock of traditions—tends to be a uniquely powerful focus for narratives of solidarity and underlying security. Even when formally included in the nation-state, minorities' cultural difference (especially when preserved long after arrival) can lead to their exclusion from the narrative around national unity and security, with the implication that they threaten it, as observed by Ibrahim (2005).

This article complements and extends securitization theory in three ways. First, it explores the part played by so-called "virtuous" supra-national institutions, in this case the ECtHR. It uncovers the Court's entanglement in security politics by considering its treatment of covered Muslim women. Higher court decisions are especially important political signals in regions (like Western Europe) where judiciaries are viewed as neutral and non-political. However, here we shall see that judicial human rights, which are held up as morally superior to the nation-state and a check on its powers, have abandoned the role of neutral audience and become a player in national governments' security politics.

Second, this article looks not only at security actors but also at how securitization and security practices create insecurity through practices of normalization and exclusion, leading to psychological and physical harm (Kreide, 2019). Such harms include contributing to bodily precarity, and I explore this with reference to the covered Muslim woman. Elites' rhetoric and visible security preparations have a stronger effect on public perceptions if the threat is perceived as "direct" and "on-the-ground." If someone portrayed as "threatening" is in people's locality, whom they might even pass in the street, this will fulfill this direct-threat function. Political leaders or the media might label normal behavior a security problem to justify the implementation of policies to contain this constructed threat. It is, therefore, useful to conceptualize security as an institutional construction of security practices, which create insecurity through a dialectical process resulting in the normalization of exclusionary practices (Kreide, 2019).

Third, the article considers how securitization is part of racialized coloniality. It has its origins in colonialism as whole populations had to be subdued and regulated to prevent uprisings—part of which involved a regulation of

the colonial, exotic, and body (Said, 1978). Here, this facet of securitization will be illustrated by how the current censoring of the veiled woman across Europe, couched in the language of national security and gender oppression, echoes how the colonial body was marked in a postcolonial world at a time of heightened insecurity. Political and popular fixation on the veil resonates with the practice of differentiating the civilized “west” and barbaric “east” (Baldi, 2018).

Despite being a minor social phenomenon, government after government in the European Union (EU) have acted to prohibit various forms of covering from some public spaces and have enacted outright bans on full-face covering in public spaces. This pan European trend to proscribe the veil began in France, swiftly followed by Belgium, before spreading to include countries as diverse as Germany, the Netherlands, Italy, Spain, Switzerland, and Denmark. Although the prohibition of the burkini in 2016 was overturned by France's highest administrative court, a number of cities along the French Riviera continued with it. France has instituted national bans, Spain, Switzerland, and Germany have allowed individual municipalities to decide on whether to implement bans or not. Several towns in Italy have local proscriptions on face-covering and some mayors from the anti-immigrant Northern League also banned the use of Islamic swimsuits. In Germany, half of its 16 states stopped teachers from wearing headscarves. In Spain Barcelona announced a ban on full Islamic face-veils in some public spaces such as municipal offices, public markets, and libraries.¹ In Germany, Angela Merkel opposed the burqa for preventing integration and Denmark recently (August 2018) began its policing of the full-face veil in Copenhagen.²

A number of (sometimes surprising) nongovernmental movements and organizations have been complicit in this governmental regulation of Muslim women's bodies such as the media, feminists, anti-racist, and left-wing groups. Feminists like Elisabeth Badinter, anti-racist groups such as SOS-Racisme, and the Green Left have all rallied behind the narrative of the the veil as a form of oppression. These movements have used “testimonial figures” or the “exceptional Muslim” to project the image of the “ideal” Muslim, such as Hirsi Ali (Amiriaux, 2013) as part of the security drama. Fadela Amara (a French Algerian), who claimed that the ban reflected democratic principles protecting women from the “obscurantist, fascist, right-wing movement” that the burqa represents,³ has also been held up as the “good” Muslim woman. Paradoxically, the rejection of “difference” politics by these “progressive” movements has led them to side with the populists, rather than oppose them as they normally would, enabling politicians to pursue a populist agenda.

Governmental elites, such as Sarkozy and Hollande justified their excessive regulation of Muslim women's bodies in human rights language, problematizing the veil as oppressive, seeking to persuade women to uncover for self-protection. Recently, Macron maintained that France needs to convince covered women that the headscarf or burqa does not “conform to the civilities of French society” and contrasts unambiguously with France's efforts to promote women's rights and gender equality, whose importance needs to be explained.⁴ This statement perfectly captures the trope that covered women need to be saved by higher standards of civilization, which are essential to being properly European. These new forms of embodiment are excluded by powerful state actors resulting in the disqualification of this minority of women from the European community. Such women have been portrayed, moreover, as presenting serious security problems which justify differential treatment, regulation, and containment. Women who choose to cover have taken the “wrong choice,” leading governments seemingly to protect them while also presenting them as a threat, exposing a new intersection of orientalist and colonialist rhetoric in combination with popular nationalism (Sabsay, 2012).

Our entry into a new era of “unbound” security creates enemies and fears, mainly about an alleged “alien” presence, and rests on a popularized idea of the dangerous body. Securitization is a form of political mobilization which creates “dangerous” spaces and practices, inducing insecurity not only against the target “threat” but also the general population (Huysmans, 2014, p. 3). Securitization practices particularly affect unpopular, nomadic communities (Kreide, 2019). Muslims perfectly fit these criteria, being members of a diasporic community united by a commitment to a global ummah. The terrorist look-alike might be the bearded Middle Eastern man (Puar, 2007) or a Middle Eastern-looking man who wears a backpack in the underground, leading to tragedies such as that of Charles de Menezes. Now covered Muslim women in Europe have become the “suspect community” where the

control of terrorism has turned to Muslim dress (Bigo, 2002) with the veiled woman becoming an obsession among a growing number of European governments (Baldi, 2018). She is deemed a threat because, by being covered, she defies the technologies of surveillance just as she defies the gaze of others. She is hard to subject to surveillance regimes, invoking memories of Europe's colonialist struggles, such as the Algerian War of Independence, where liberation fighters used the veil as disguise, and where French colonialists forcibly unveiled Algerian women.

The human rights narrative mobilized by government elites protects only those who are seen to belong, namely those Muslim women who do not cover and assimilate into the mainstream community. Underlying this is an anxiety about multiculturalism and the religious pluralism associated with it. Governments in pluralistic societies seek to manage their religious minorities, adopting strategies of integration and assimilation, which are used to domesticate minority groups (Turner, 2012). Such assimilationist methods are disguised as progressive by emphasizing reintegration, liberty, and freedom for women (Huysmans, 2006, p. 4). Portrayed as a threat to the essential social fabric of Europe, the very small minority of women who choose to cover can only exercise their human rights by electing to uncover. In this article, I will argue that, by sanctioning the regulation of the Muslim woman's body, human rights law has become an agent rather than audience of security politics and thus a proponent of a neo-colonial agenda in the name of preserving national security.

2 | TAKING CONTROL? JURISGENERATIVE POLITICS AND STRATEGIC LITIGATION

Veiled Muslim women have contested the bans by mobilizing the language of human rights and national inclusivity. In addition to various forms of protest and juris-generative politics that advocate the "rights of others" (Benhabib, 2004), covered women also used strategic litigation to end the bans by turning to human rights law to ensure their security (Brown, 2018). This allowed formal human rights' institutions to transcend the divide between diversity and universalism where religious identity and the ideal national citizen were not seen as antithetical. The use of higher courts held out hope to these groups when mainstream politicians and normally progressive organizations let them down. This is especially so in the United Kingdom and other countries in Europe through "common law" or other traditions where courts have traditionally had a role in holding politicians to account or making law themselves. Cases of strategic litigation initially focused on the hijab but have since turned to national bans on wearing the burqa in public including, most notably, *S.A.S. v. France*,⁵ *Dakir v. Belgium*,⁶ and *Belcacemi and Oussar v. Belgium*.⁷

It was clear from their submissions that the complainants were not covering because of familial pressure. In *S.A.S. v. France*, for example, the litigant stated that she wore the burqa and niqab for religious, cultural, and personal reasons only. Moreover, she said that her choice to cover depended on her spiritual mood and, without wanting to annoy others, she simply wanted to "feel at inner peace with herself."⁸ Dakir started to wear the niqab when she was 16 for religious reasons.⁹ Belcacemi, a Belgian citizen, and Oussar, a Moroccan citizen, similarly stressed freedom of choice. Belcacemi said she wore the niqab purely out of religious conviction and always removed it when necessary. And Oussar, the second claimant, said she wore the veil because it was integral to her religious beliefs.¹⁰ The litigants alleged that their human rights had been violated in relation to various articles in the Convention, including the right to religious expression and for such freedom to be enjoyed without discrimination against religious, minorities, or other statuses.¹¹ Moreover, it is important to note that the complainants appealed to the principle of pluralism. Referring to the ECtHR's judgment based on the concept of "living together" in *S.A.S. v. France*, Dakir alleged that the ban did not uphold this principle because such a concept assumed a more pluralist and tolerant attitude to different dress codes.¹²

In accepting the governments' defense that full covering prevented positive interaction between people, jeopardizing the possibility of "living together" (*vivre ensemble*) and fell short of the "minimum requirement of civility that is necessary for social interaction" the ECtHR failed to protect Muslim women from the infringement of their

human rights by France and Belgium by arguing that "concealing one's face in public breaks social ties and expresses a refusal to adhere to this principle."¹³ These judgments relied on a vague and nonlegal concept based on a constructed ideal of what counts as harmonious interaction. It seemed as if the ideal of "living together" was a legally justifiable aim which could undermine fundamental freedoms if abandoned as well as individualization and the maintenance of public order. This exposed how the ECtHR accepted the French and Belgian defenses based on the appropriation of a concept originally embodied in the French Constitutional Court's judgment which implied that individualization, and thus even democracy itself, was threatened by face covering (Burchardt et al., 2018). The ECtHR's assimilationist and secularizing stance meant that its decision making was more allied with the retreat of multiculturalism than the protection of minority rights and religious freedoms.

The Court used a dubious legal concept to deny covered women their right to religious expression by claiming that the obstacle to the realization of human rights was the Muslim woman's refusal to comply with European standards of what it means to be able to communicate harmoniously, endorsing old orientalist thinking. This view reflects a secularist rhetoric that posits the Western modern "invention" of face-to-face interaction as a universal signification of civilization (Fournier, 2013). The stress on "living together" could have been rendered compatible with the pluralism and tolerance potentially inscribed in the case if the Court had not insisted that to live together harmoniously depended on Muslim women making a sacrifice. Banning religious symbols in the public sphere did not signify a more open and pluralistic society (Steinbach, 2015, p. 42). Furthermore, the Court provided no evidence that "the face plays a significant role in human interaction," and that the effect of concealing it would "break social ties" opinion (Ati, 2019).

The Court justified its decision making on the grounds that there was no domestic consensus within Europe, expressing its attachment to subsidiarity. In so doing, it abandoned its role as a check on state power by failing to establish an overarching consensus on such a politically sensitive ban. Instead, in *Belcacemi and Oussar v. Belgium*, for example, the Court held that the principle of subsidiarity should be prioritized and the question of protection of others should be left to domestic governments.¹⁴ Complicity with governmental securitization was instrumentalized by an inappropriately high level of commitment to the subsidiarity of the Convention.¹⁵ It should not have been beyond the ECtHR to have found some evidential basis for its judgment that wearing the veil could disrupt public order and infringe the dignity of others. By ignoring contrary evidence,¹⁶ the Court unthinkingly endorsed the security narrative that disproportionately targeted a soft target: the Muslim veil. While *Lachri v. Belgium* was an exception to this blanket ban, it was on the grounds that Ms Lachri was a civil party in a criminal case and not a representative of any public office.¹⁷

3 | JUDICIAL HUMAN RIGHTS AND THE HARMING OF MUSLIM WOMEN

In these judgments then the ECtHR abandoned its cosmopolitan impulses, becoming a vehicle of securitization by hijacking governmental security agendas and judging full covering to be a threat to public order. In all of the cases that the ECtHR has adjudicated on to date involving bans on the burqa, the Court has deferred to the national governments' security agenda without assessing proportionality. Thus, it has ceased to take on the role of neutral audience which provides a check on excessive state power but has instead colluded with state tales about the threat to public order posed by a simple garment worn by a tiny minority of women, demonstrating the shift to rights to security in the name of "rebalancing" human rights (Lazarus & Goold, 2007, pp. 7–9) and supra-national institutions' role in this move. Moreover, the judgments invoked the stereotype of national minorities as disloyal and irredentist (Banting & Kymlicka, 2010).

The ECtHR has endorsed state gendered and racialized security practices by presenting itself as "saving Muslim women from Muslim men" (Brown, 2016). Thus, the "unveiling" of women has been coded as a mark of modern liberal civilization and undermines human rights' legal commitment to protecting humanity in favor of a

secular and liberal subject (Leckey, 2013). The Court's acceptance of governmental arguments in favor of the ban meant it endorsed the state's increasing intrusion into people's private lives (Baldi, 2018, p. 685). The mobilization of the ECtHR against covered women is an extension of state surveillance and disciplinary tactics exercised on the bodies of national citizens considered resistant to modernist ideology (Motha, 2007) thereby strengthening the state's control over their bodies and rendering them passive state subjects (Behiery, 2013).

So judicial human rights can easily be turned against the most vulnerable (Kreide, 2019, p. 62). In these cases, the ECtHR has betrayed its core function of protecting human embodiment based on a universal shared bodily vulnerability, which underpins cultural differences. Human vulnerability is based on shared bodily frailty and human rights should ultimately protect the body from harm, which might include persecution, incarceration, discrimination, and exclusion (Turner, 2006). The ECtHR judgments failed in their basic task, exposing the precariousness of the Muslim woman's body, and normalizing it by forcing women to unveil, obliterating aspects of Muslim identity (Leckey, 2013). The legal judgments effectively endorsed disturbing cases such as that where a woman was forced to remove her burkini on a beach with armed police officers standing over her (Baldi, 2016). This can be understood as a legally sanctioned form of gender-based violence, denigrating and humiliating women by stripping them of clothing. The Nice incident involved forcing a woman to remove clothing in a public space. Such indirect violence was enabled by a state apparatus which successfully depicted the body of the Muslim woman as a symbol of terror (Brayson, 2019).

This practice has become normalized as people in the street harass and strip women of their head coverings, creating a growing sense of insecurity for women who have become vulnerable to verbal and physical abuse in the street. Anti-Muslim hatred is gendered with the majority of victims being female because it is easier to target visible Muslim women who wear the hijab or burqa. Growing evidence of such practices across Europe and in North America suggest that the global increase in Islamophobia disproportionately affects covered Muslim women (Ati, 2019). By endorsing government bans, the ECtHR has contributed to a climate where the rise of hate crimes against covered women can be normalized. Securitization has, therefore, racialized Muslims in such a way that they become vulnerable to racist attacks through a form of "new orientalism," which specifically targets Muslim women's dress (Amin-Khan, 2012).

Far from liberating covered women from oppression, this forcible undressing of women promotes the myth that women's freedom is ensured by a "sexualised female form" (Abraham, 2007) and the view that uncovering allows movement from the margins to the privileged mainstream (Yoshino in Leckey, 2013). However, women's acknowledgment of their own form of compulsory feminine dress would undercut any sense of superiority (Brown, 2006, p. 189). This decision making reflects a clear commitment to assimilationism. Although the ECtHR, throughout the judgment in *S.A.S.*, reiterated that "pluralism, tolerance and broadmindedness are hallmarks of a democratic society," the court's conclusion that there was no violation of the applicant's rights legitimizes a law which removes pluralism from the public sphere and thus contributes to the intolerance of Muslims (Berry, 2014).

Judicial human rights have thus become agents of securitization based on techniques of control and processes of normalization, which lead to insecurity and have made covered Muslim women more vulnerable to abuse. The veiled Muslim woman is excluded from human rights because she recalls the nomadic culture of Muslims and their loyalty to the global ummah over and above loyalty to the state. State surveillance and disciplinary tactics exercised on the bodies of its citizens, particularly those perceived as resistant to modernist ideology, are called to mind when veiled women become embroiled in the state's struggle for power over bodies (Behiery, 2013). Human rights' protection is, therefore, based on a secular idea of womanhood and the undressed woman as a symbol of freedom and public safety. On the grounds of emancipating them, Muslim women's protections from human rights depend on their giving up external manifestations of their religion characterized as incompatible with the rights and freedoms of others (Ati, 2019).

It may, therefore, be deduced that the "judicialization" of politics has particularly affected the politics of religious difference. Judicialization has strengthened the rise of constitutional and international courts and the movement of controversies from the political to the judicial field. So local burqa disputes have become disrupted

in two ways: first, through transference from the political into the judicial fields and, second, by moving from local to national and finally to transnational arenas. As judicialization has tightened the framing of disputes about the burqa, legal templates have adopted standardized language so that socio-legal dynamics smoothly enable the spread of burqa bans (De Gamber & Koenig, 2014; Hirschl, 2008).

The Court's regulation of Muslim women's dress shows how securitization contributes to the normalization of racial violence through political and judicial power in the context of colonial modernity. It is infused by a mode of racial governmentality that draws on old colonial motifs in the modern setting. The Court has bought into the discursive framing of an issue—the Muslim veil—triggered by a crisis which has been used to endorse exceptional measures, including hard ones such as anti-terrorism legislation, and softer ones, such as the regulation of dress (Mofette & Shaira, 2016). While supra-national human rights institutions, such as the ECtHR, should be the neutral arbiter between state power and the rights of minorities, in this case at least, it has embraced the racialized security programs of some EU member states.

Thus we see judicial human rights departing from cosmopolitan ideals whose commitment to openness and tolerance of diversity is at odds with securitization. There has been the creation of general unease where multiple actors, through exchanging fears and beliefs, reinforce ideas of what counts as a dangerous society (Bigo, 2002). In line with Huysmans and Buonfino's (2008) thinking, the Court has been complicit in the securitization of the veiled Muslim woman through the politics of exception and unease (Ati, 2019). Through a combination of security fear and available technology anyone who defies surveillance is automatically a security risk. In Europe, Muslim communities defy surveillance because they live and worship separately, often speak a nonlocal second language, and cannot easily be penetrated by informers (as earlier "subversive" groups, like communists and anti-nuclear campaigners, could). Covered Muslim women are generally even harder to observe than men—this allows them to be portrayed as even more dangerous, more likely to be radicalized and harder to detect when they are.

4 | THE CONDITIONALITY OF HUMAN RIGHTS

So it appears that human rights are denied observant Muslim women, undermining what ought to be at the heart of universal human rights, namely, the prevention of bodily wounding (Turner, 2006). We see that human rights are stratified (Morris, 2013). In step with the new security agenda pursued by EU member states, the Court has accepted the Muslim woman's body and dress as a threat to public order. Human rights discourses do not figure in addressing the Muslim woman's choice to cover in accordance with her religious belief to the extent that this minority is rendered vulnerable to abuse in the street. Indeed, according to the way human rights are applied, Muslims who are formally full citizens are confined to marginal or quasi citizenship statuses (Nash, 2015) which underpins judicial human rights' denial of their right to external religious expression. Their rights, or right to have rights, have been derogated because they are perceived as "dangerous citizens." So human rights are not unconditional but depend on dressing the "right" way, namely by uncovering to avoid discrimination (Ati, 2019).

A central question then becomes: how can we explain human rights law's disproportionate response to a minor and harmless cultural trend? Why would the Court allow itself to be so caught up in security politics such that it denies the rights of a vulnerable and very small minority of women? The repeated failure of the ECtHR to uphold the right to religious expression, evident in *S.A.S v. France* for example, reflects a range of factors. Perhaps the most salient is the rise of populism to the extent of providing succour to populist parties such as the Danish People's Party, the Norwegian Progress Party, the Northern League Party in Italy, the Swiss People's Party, and the Freedom Party in the Netherlands, becoming more important than tackling real threats. It has been right-wing populist parties that have driven the veiling ban, presenting the veil as antithetical to democracy. Such parties contributed to the rise of negative cultural framing of immigration which put the Muslim veil at the center. Populism used this as a symbol of the divide between people and a cosmopolitan elite that allowed immigrants (they believed) to undermine the nation (Yilmaz, 2012). When a center right minority government came to power in the

Netherlands in 2010 in alliance with Geert Wilders's Party for Freedom (the third largest at the time) the coalition enacted a general ban on face coverings. The pan-European crisis of multiculturalism has provided a platform for human rights law to act disproportionately. In reacting to a non-threat, the Court was enacting a "symbolic strike against the symbolic representation of a challenging ideological opponent" (Cox, 2019, p. 249).

The Court's deference to populism is further understood in relation to the wider geo-political context such as the rise of unpredictable international terrorism by non-state actors (Cronin, 2002/03) combined with "home-grown" terrorism carried out by second and third generation Muslims in western Europe (and the United States), which has grown since 2001 in response to transnational grievances and which targets civilians (Wilner & Dubouloz, 2010). These developments coincided with the arrival of refugees displaced by Middle Eastern wars leading to the engagement in crisis governance including emergency controls, border controls and surveillance alongside intra-European conflict because European states differ in their refugee and immigration policies (Morsat & Kruke, 2018).

Attempts by the EU to establish a homogeneous identity have always been precarious, reigning over diverse national economies and cultures all of which have their own particular interests which are lobbied for in this supra-national entity. Now, with the exit of Britain and the threat of other member states copying it Europe is undergoing a further crisis. The movement of refugees from war-torn zones into some European countries has triggered the rise of anti-immigration populist movements across Italy, Germany, Spain, and other EU countries. And, the *bête-noir* of the refugee movement is the Muslim. The so-called carrier of extremism, violence and terrorism all of which collided in the rape crisis in Berlin. Juridical human rights are less favorable to the most unpopular minorities and have stolen the thunder of the populist right cloaked in so-called "liberal" and "progressive" values. European identity, forged in the 1980s, has started to unravel and the need to keep it together underpins the excessive regulation of the covered Muslim woman. The Court's permission for Muslim women to be forcibly unveiled placates popular prejudice and overshadows democratic pluralism and commitment to cultural difference, which are essential to protecting human dignity (Ati, 2019).

Intolerance of tolerance is often the product of some sort of existential crisis and in this case it is plausible to point to the insecurity produced by the crises of national and supra-national identities and the Court absorbing the state's traditional reaction to insecure identity. The juridical regulation of clothing has been critical to the establishment of an imagined homogeneous national identity and the means by which "foreigners" are defined as non-citizens (Baldi, 2018). Dress has long been a way to distinguish "alien" from "citizen" where the first is cast out from the law and the second reinforces the "order of things" (Baldi, 2018). Historically, veiling and unveiling play an important part in nation building (e.g., Turkey and Iran) and in solidifying national dominance. Such bodily regulation is common at times of national and international crisis and conflict. And where the nation is imagined, it is often done so in a "sexed" way (Mayer, 1999), which explains the disproportionate focus on Muslim women. In this case, Europe is responding to a transnational community which is challenging national norms that are themselves being questioned by the effort to provide a "glue" between different nations. This supports the contention that human rights have yet to escape their colonial heritage and decolonize (Samson, 2020).

The Court's decision making uncovers an engrained ambivalence within human rights (Kreide, 2019) where they have become both the "benchmark" of security and insecurity. This ambivalence stems from the normative individualism of liberal human rights that centers on the protection of individual security and which sits uneasily with the idea a community within a community (Kreide, 2019, p. 62). The use of human rights to uphold national bans on the veil exposes a tension between universalist and communitarian principles such that "liberalism's poorly drawn fight with communitarianism [lacks] a strong account of solidarity" whereby communitarianism is understood as an "enemy or at least a foil" (Calhoun, 2002, pp. 871–879). The liberal idea of rights needs to incorporate a stronger sense of what binds people to one another (Calhoun, 2002, p. 881) and includes recognition of communal, especially religious, identities. Human rights are, therefore, indecisive in combatting securitization—being simultaneously conditions for freedom and resistance as well as instruments of oppression (Kreide, 2019, p. 61). Women's rights are integral to this as they presume the (baseless) persona of "suspect terrorist" based on

a visibility of the supposed gulf between “the West” and “the Rest,” which leads to the instrumentalization of women's rights for the purpose of “security.”

The paradox of judicial European human rights has its roots in classical theory, in particular, in the views of Locke and Montesquieu and the dominant status of natural law (Kreide, 2019). John Stuart Mill, the defender of liberal human rights, had very fixed views on who were not sufficiently civilized to deserve rights. In his view it was the individual not the collectivity who should be at the center of all policy and people under colonial rule were considered undeserving. The “Rights of Man” went hand in hand with colonial rule and slavery (Samson, 2020, p. 23). Such principles continue to guide contemporary human rights law. Now it is about the exercise of life, liberty, property, and security. The major problem, however, is that freedom does not include the potential for social participation. The normative liberalism to do with protecting individual security is based on being a part of mainstream society. There is a tension between human rights and participation in a community rooted in the liberal tradition which pits the individual against others (Kreide, 2019).

From this perspective the regulation of Muslim women's clothing is, according to the liberal normative view of human rights, seen as extending human rights to these women and not denying them, that is, protecting the individual woman from gender abuse. But in doing this, by presenting a case that the law is protecting the human rights of Muslim women manifesting their religious commitments, it is infringing their right to be a people among a people and denying them agency while simultaneously highlighting them as a security threat without any evidence. This reflects the problematic dialectic nature of human rights, namely that it is useful for individuals to make claims against the state but those who make claims as part of the community cannot exercise their rights. Thus, in liberal democracies, those who most need to make rights claims do not have the means to do so (Kreide, 2019) rendering covered Muslim women precarious.¹⁸

5 | CONCLUSION: DESECURITIZING THE VEIL?

While Muslims' political and social exclusion has forced them to take a formal, legalistic approach to asserting and defending their rights, the outcomes are generally negative because the law—especially human rights law—is a slow and blunt instrument. Their cases (on Muslim dress and related issues) are forced upwards to supranational courts; and when these finally deliver a verdict, often months or years later, they almost invariably push back into a national jurisdiction, where (majority) cultural norms shape the law and its interpretation. Dembour (2006, p. 13), supporting this view, notes that there is in European human rights a multitude of problems, which might affect women's rights, because applications are often declared inadmissible or there may be disproportionate derogation of provisions in national emergencies or deferral to national states in public security. Judicial human rights, instrumentalized through the ECtHR, have become embroiled in the securitization process normally ascribed to national institutions and actors.

Strategic litigation on the part of Muslim women has failed to penetrate this process. Left legalism, whose scope for rallying behind individual cases has (at least in Europe) been limited. Muslim women cannot rely on the left to force human rights law to ensure justice through legal means as promised by the liberal state. Left legalism has been trying to give voice and agency to women affected by the burqa bans by appealing to freedom of religion and multiculturalism as a way of accommodating religious pluralism. The unintended consequences of this is that it engages in processes which shape the act of veiling in the West without reference to the multiple ways in which women might choose to cover and fails to see that the ban does not simply silence women but wholly constitutes the Muslim woman. Left legalism is not, therefore, necessarily an effective way of combatting state power and decentralizing it (Fournier, 2013).

Importantly, the Court in which these women find themselves is based on a legalistic process and speech acts which stand and fall on lawyers, but which might be culturally at odds with those who use non-verbal ways of enacting their rights. Muslim women, in these cases, are being forced into a Eurocentric rule system. Non-western

modes of protest are not necessarily vocal—they can be silent and physical. Veiled women for example, asserting their rights simply through dress. The difficulties they face by recourse to human rights law is that they are being forced into someone else's rule system and a Eurocentric judicial system (Ibrahim, 2005).

The desecuritization of the veil involves removing covered Muslim women from the political and legal security agenda. Desecuritization might best be practiced through creative, every-day micro practices and the production of counter-narratives (Legros and Lièvre in Kreide, 2019). A return to the politics of rights (Scheingold (2004), which are rooted in minorities' daily experiences of discrimination, may complement this. From this perspective, the gap between growing diversity and universalism may be overcome by locating human rights within "democratic iterative politics" (Benhabib, 2004) and an appeal to solidarity that calls for care for strangers (Calhoun, 2002, pp. 878–888). Such action would involve jettisoning strategic litigation in line with Scheingold's (2004) concept of the "myth of rights," that is the myth that legal rights are directly empowering. Lack of enforceability is more visible with human rights than most other legal rights because they do not depend on state power and nor do they correlate with duties (Turner, 2006).

As formal legal channels have been found wanting, rights mobilization should be used in conjunction with other approaches that do not depend on formal, legal challenges (Scheingold, 2004). Veiled women are making a rights claim, a claim to be a community within a community (Kreide, 2019) and a new politics of human rights could rescue them from the formal judiciaries and transform them into a political movement (Scheingold, 2004). This would involve the mobilization of particular causes using the wider framework of human rights language, in a way that connects with people's shared experience, and raises the legitimacy of human rights by showing their benefits to a wider community. Moreover, while human rights have been disconnected, judicially, from cosmopolitanism, it is worth reflecting on how they might be furthered through the "rebellious cosmopolitanism" characteristic of the politics of Albert Camus. Camus himself was no fan of the Muslim veil, but his emphasis on unrelenting rebellion and strategic use of nonjudicial human rights (Hayden, 2013) could be a useful model for future protest.

Unrelenting rebellion could only work through making effective alliances, which are so far missing because the veil ban has such popular appeal and strategic value for governments pursuing security as part of their neo-colonial agenda. The veil has the potential for "resistance identity-building" (Lorasdağı, 2009), but to bring it into normal politics and out of security, covered Muslim women will need to make alliances with sympathetic organizations such as *Amnesty International* and *Human Rights Watch*, both of which have consistently stated that bans on the headscarf and burqa violate international human rights and representatives of which have made statements in support of the women in *S.A.S. v. France* and the other cases.

One of the most problematic of schisms is within the feminist movement. This rupture centers on western liberal feminists versus decolonial feminists who argue that the former has silenced the experiences of so-called "Third World" women. There is a big gulf between liberal feminists such as Elisabeth Badinter and secular Muslim women in organizations such as *Ni Putes Ni Soumises* and *FEMEN*. Such movements have played an important part in (rightly) condemning women imprisoned for failing to wear the headscarf, the problem being that their protest trades on another form of objectification of women, namely, bodily exposure. Feminists who have accepted governmental bans on the veil have, in their argumentation, succumbed to the kind of orientalist stereotypes that the international feminist movement has been at pains to fight and have failed to see that feminism and anti-racism should be mutually reinforcing (Delphy, 2006).

Muslim women who choose to cover and those who choose to uncover need to find common ground. Both are subjected to the male gaze and governance, so they need to join together to create a diverse Muslim-ness and defy objectification. It is important that relentless rebellion joins the interests of both groups and harnesses them to a common goal. Thus, there needs to be a movement to overcome dichotomous thinking within feminism where the veil either represents repression or resistance and where there is an alliance between the former with liberal, universalist discourse and the latter with postcolonial feminist discourse, such that both end up neglecting the variety of reasons for choosing to cover (Bilge, 2010). There is a need to overcome the dichotomy within feminism where, for liberal/universalist feminists, the veil is seen as a marker of subordination and oppression- and where

cultural insiders such as Fadela Amara are mobilized to support their cause as experts versus post-colonialist feminists who see the veil as a form of resistance, albeit against commodification and westernization. Both approaches side-line the possibility of wearing the veil for religious reasons (Bilge, 2010).

To counter the securitization of the veil and the complicity of judicial human rights in this, there needs to be relentless rebellion rooted in the combined resistance of human rights groups, Muslim women of various persuasions, feminists, the left and anti-racists through realizing that framing the bans on the veil in terms of national security and gender oppression has served to disguise the neo-colonial agenda underpinning them and to decolonize the language of security which has demanded assimilation and an enforced "whiteness" of the public space dependent on age-old regulation of women's bodies under colonialism. This kind of activism has the potential successfully to disconnect European human rights from a securitizing, neo-colonial project (Brayson, 2019).

DATA AVAILABILITY STATEMENT

Data sharing is not applicable to this article.

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ENDNOTES

- 1 www.bbc.co.uk/news/world-europe-13038095.
- 2 <https://www.bbc.co.uk/news/world-europe-45064237>.
- 3 <https://fcc.uchicago.edu/directory/ neither-whores-nor-submissive-burqa-ban-france>.
- 4 <https://www.express.co.uk/news/world/946947/emmanuel-macron-muslim-women-islam-burqa-headscarf-ban-france>.
- 5 S.A.S. v. France, App. No. 43835/11.
- 6 Dakir v. Belgium, App. No. 4619/12.
- 7 Belcacemi and Oussar v. Belgium, App. No. 37798/13.
- 8 S.A.S. v. France, App. No. 43835/11, para. 12.
- 9 Dakir v. Belgium, App. No. 4619/12.
- 10 Belcacemi and Oussar v. Belgium, App. No. 37798/13 para. 6.
- 11 Articles 8, 9, 10, and 14, respectively.
- 12 Dakir v. Belgium, App. No. 4619/12.
- 13 S.A.S. v. France App. No. 43835/11.
- 14 Belcacemi and Oussar v. Belgium, App. No. 37798/13, para. 51.
- 15 Dakir v. Belgium, App. No. 4619/12, para 59.
- 16 Provided by The Human Rights Centre of Ghent University in S.A.S. v. France, App. No. 43835/11.
- 17 Lachri v. Belgium, App. No. 3413/09.
- 18 This is not to suggest that European Muslims are not divided over the veil, however, these complexities have been obfuscated by a defensive reaction to attacks on the veil that have been based on a racist portrayal of covered Muslim women (Amin-Khan, 2012).

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How to cite this article: Edmunds AJ. Precarious bodies: The securitization of the “veiled” woman in European human rights. *Br J Sociol*. 2020;00:1–13. <https://doi.org/10.1111/1468-4446.12806>